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Watson v. Bank of America Appellant's Brief Dckt. 43668

IN THE

SUPREME COURT

OF THE

STATE OF IDAHO

CRAIG WATSON PLAINTIFFS-APPELLANT,)
SERENA LOU WATSON PLAINTIFF,)
)
V.) Supreme Court Case :
BANK OF AMERICA, N.A., etal) 43668
Defendant-Respondent)
) District Court Case :

APPELLANT'S BRIEF

CV-2014-6128

Appealed from the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai. Honorable Judge Lansing L. Haynes Presiding.

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STATEMENT OF THE CASE

This Case is regarding the (6) Six Year, ongoing record of Defendants actions against the Plaintiffs in the Case. Defendants violated a number of laws as well as Plaintiffs Property Rights, while dealing with Plaintiffs Mortgage Loan and Mortgage Loan Modification. Including Plaintiffs HAMP Modification and contracts, notices, alleged sales for value, Land Record Assignments and claims, all involving Plaintiffs Home at 890 S. Star Garnet Rd., Coeur d'Alene, Idaho, 83814.

The first issue was that Defendant Bank of America accepted six payments from Plaintiffs, on the HAMP Modification that Plaintiffs qualified for, but then after Plaintiffs qualified for the Modification to become permanent, Bank of America began failing to credit the payments Plaintiffs were making.

Then after more than 90 days from the time Bank of America began not crediting Plaintiffs payments, Bank of America told Plaintiffs they were going to Foreclose on Plaintiffs, and that Plaintiffs would need to start the Modification process all over again. Also that Bank of America was actually only the servicer of the loan, for the Noteholder, which meant Bank of America was actually not the "Lender" , as Bank of America had stated they were, on the Contract that alleged to make the Loan Modification Permanent.

Since there was National News stories on the subject of Mortgage Servicers committing fraud on Mortgage Loan Modifications with Homeowners at the time (2010), Plaintiffs realized this was actually the issue. Bank of America had defrauded Plaintiffs of the chance to Modify their Home Loan with the actual Lender, of their Home Loan. Statement

So, since, having little other recourse, Plaintiffs gave in and started trying to apply for modification again,, but while Plaintiffs were doing so, Bank of America was at the same time pursuing foreclosure of Plaintiffs home. Since Defendant Bank of America was not the "Lender" at the time, as they stated they were in the May 28,2010 dated Loan Modification Contract with Plaintiffs, Bank of America had an illegal, fraudulent and Void assignment of deed of trust, recorded into Plaintiff's Public Land Record approximately six months later, to try to retroactively make themselves the Lender, to then foreclose.. This was an assignment in which Bank of America employees who are designated as MERS Vice Presidents, because MERS has very few employees and is actually only a registry, acted to allegedly assign the Note as well, for value and along with the monies owed. Since these assignments of notes, from MERS, have been ruled over and over again in courts across the Country, to be Void and it was six months after Bank of America had presented the Modification Contract to Plaintiffs, Bank of America employees knew they were acting illegally. And after this illegal assignment, Plaintiffs knew this was indeed the issue and the reason Bank of America did not credit Plaintiffs payments, because Bank of America could not legally honor the Modification Contract.

But regardless of Bank of America knowing these actions are illegal and fraudulent, Bank of America then began an effort to foreclose on Plaintiffs, no matter how much poof was shown against their actions being legal. After the next couple years of this, Plaintiffs were forced into filing for Bankruptcy protection. During the filing, Plaintiffs Objected to the Proof of Claim Bank of America filed. Bank of America Attorney then swore another sanario, where Bank of America claimed it was the Lender by way of blank endorsement from a company they had taken over, Countrywide Financial. Around this time Bank of America told Plaintiffs they would

now seriously consider Plaintiffs for a Modification and dropped the foreclosure filing, convincing Plaintiffs and getting them to have the Bankruptcy filing dismissed. But Bank of America was again dishonest and would not approve Plaintiffs for Modification with the true lender and instead kept pursuing foreclosure of Plaintiffs home. It was at this point that Plaintiffs were forced to sell most of their business to pay for an attorney to file the complaint in District court, case no. CV-2014-6128. And it is these illegal actions that Plaintiffs raise against Bank of America in the case. Statement

THE COURSE OF THE HEARING AND ITS DISPOSITION

The Hearing this Appeal is regarding, was held on September 2, 2015. It was a hearing on Defendants Motion to Dismiss Plaintiffs Complaint, and on whether to grant Judicial Notice to 12 Items Defendants submitted. Honorable Judge Lansing Haynes Presiding. The Hearing was short and a decision quickly made. Plaintiffs realized from the Judge's statements, that Plaintiff would not be allowed to question Defendants statements, or present evidence, this by the Judge's statements at (Tr, P. 30, L.2 - 25 and p. 31, L. 1-3). But then, in the Judge's Order Granting Motion to Dismiss, at (R, Vol. 1, p.. 332, L. and p. 333, L. 1) he states that he did use evidence submitted in the hearing and items filed in the case. This is a contradiction from what was stated in the hearing. Also considering the fact that, the Judge taking Judicial Notice of items in Defendant's Affidavit would in fact turn hearing into a hearing for Summary Judgment. I.R.C.P. 12(b) If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56 .

Attorney for BOA, Jeff Bower, submits some of the filed papers from Plaintiffs temporarily filed Bankruptcy case(s) in his Affidavit, but not everything from the BK filings, for example RCO Attorney for BOA, Derrick J. O'Neils (Response to Objection to Proof of Claim) was not included, so it was only the items from the Bower Affidavit. And the Judge here said he used the papers filed from the case and the BK papers to rule for res judica, but again the discussed

Bankruptcy filings were never discharged as the Judge and attorney Bower state they were. So also not res judica.

F A C T S

1. Respondent/ Defendant Bank of America/BANA, did not credit Appellant /Plaintiff's payment of $907.16 , that was due on 08/01/2010, as paid, the same day it was received by Respondent/Defendant Bank of America, which was on 06/10/2010, as Plaintiffs were instructed by Bank of America. **(c) *Servicing practices.***

(1) In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall—
(i) Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer

2. Respondent/Defendant Bank of America, even after phone calls from Plaintiff, complaining that their payments were not being credited, in fact still did not credit Plaintiffs $907.16 payment for the 08/01/2010 due payment, even as of 90 days later, when Bank of America sent Appellant the Notice dated 09/16/2010, and found at (R, Vol. 1, p. 304) stating Plaintiffs had not paid the 08/01/2010 payment or the 09/01/2010 payment. When Plaintiffs in fact had, as proven by the Payment Record at (R, Vol.1, p. 309,310,311) and there has still not been the $907.16 payment credited on a statement to Plaintiffs, from Defendants.

3. The Notice dated 09/16/2010 also stated that BAC Home Loans Servicing, LP actually only "services the home loan described above on behalf of the holder of the promissory note (the" Noteholder")". The statement, found at (R, Vol. 1, p. 304, L. 1) directly contradicts the wording Bank of America wrote into the approx. May, 28, 2010 Loan Modification Agreement it

presented Plaintiffs, were it states " BAC Home Loans Servicing, LP (the "Lender")" at (R, Vol. 1, p. 312, L. 2) , and later states the money owed "consists of the amounts loaned to the Borrower by the Lender" at (R, Vol.1, p. 312, section 1.).

4. In December of 2010, Defendant BANA had recorded an Assignment of Deed of Trust, recorded into Plaintiffs Land Record on 12/03/2010, found at (R. Vol. 1, p. 65). This was an assignment,(which alleged in part) that MERS, for value received, grants, assigns and transfers to: BAC Home Loans Servicing, LP , the NOTE or NOTES , together with the money due or to become due thereon with interest. And as ruled in a growing amount of court cases, this is a, Void ab initio assignment. In RE Wilhelm (Idaho)-

ISSUES PRESENTED ON APPEAL

1. Did the District Court err in granting Dismissal of the Complaint under, Rule 12(b)(6), after granting Judicial Notice to the 12/03/2010 recorded Assignment of Deed of Trust. as this and the other items granted judicial notice in the hearing, were submitted in the defendant's attorney Jeff Bower, affidavit for judicial notice, which would turn the hearing into one for summary judgement, as had been argued by Plaintiffs. And as ruled in many cases across the Country now, an attempted Assignment of a Mortgage Note, from/by MERS, to another entity, is Void ab initio. Including Bank of New York V. Silverberg (N.Y.) and In RE Wilhelm (Idaho), as well as an ever growing number of other cases. Also Idaho Rule of Evidence 201(b) does not allow judicial notice to be granted on items that are contested. And Assignments by MERS, are some of the most contested items in history now.

2. Did the District Court err when the Judge states in his ruling at (Tr., vol.1, p.25, L7 thru 25). and then continued at (Tr., p.26, L1) "But really no specifications at all in the Complaint". This statement in Error because of the Claims in the Amended Complaint. at (R, Vol.1, P. 49 thru 57).

3. Did the District Court error when the Judge states at (Tr., vol.1, p.27, L. 20 - 22) ("Now, what the Court has heard today, and the record should reflect, that the Watsons did not

file any Memorandum of Objection to the Motion to Dismiss".) This In Error as in reality, Plaintiffs Memorandum in support of Objection to Defendants Motion to Dismiss, was filed on July 2, 2015 in the case, is listed in the table of Contents, and found at (R, Vol.1, p. 315) and clearly lays out strong facts for Denying Defendants Motion to Dismiss.

4. Did the Judge error when he states that, "The Watsons only state that Defendants did not credit payments, but Watson's did not perform on the Modification". Judges comments at (Tr., Vol. 1, p.26, L15 - 19) "I should say, no pleading that essentially outlines that Plaintiffs had performed under the loan agreement but there was simply that they had not been credited for payments but certainly no concise statement of how they had performed under that contract." The judge is in error here as Plaintiffs stated in their Affidavit of Craig Watson in Support of Objection to Motion to Dismiss, filed July 1, 2015 and found at (R, Vol. 1 p. 299 - 302), that they did in fact perform under the HAMP Modification, and at (R, Vol. 1, p. 300 paragraph 5) it states "that in 2009 your affiant and his wife qualified for and received a HAMP Loan Modification with Bank of America and after a six (6) month trial period, wherein Plaintiffs made the six (6) HAMP trial period payments, from November 2009 through May of 2010". Also found at (R, Vol. 1, p. 309 - 311) is the payment record from Bank of America, showing the total of 8 payments on the Modification, including the 06/10/2010, $907.16 payment, so BANA knew they had received the payment, but they would not credit it on Plaintiff's statements and honor the Loan Modification Agreement. So BANA was not crediting Plaintiff's Permanent

payments and BANA, decided instead to send the 09/16/2010, Notice of Intent to accelerate, which made no sense, and left Plaintiffs realizing something was faulty as far as BANA statements as to who was actually the " Lender ".

5. Did the Judge error when he stated at the Sept. 2, 2015 hearing that the Bankruptcy filings preclude any pre-petitioned claims based on the res judica doctrine, at (Tr., p. 26, L. 2 thru 5). First of all the Judge, starting on line 2 states, " That the Court finds that the discharge in bankruptcy that the Court has taken judicial notice of " This is in error as first, there was no discharge in those filings, and that is one of the requirements for res judica from a Bankruptcy filing, because there must be a "discharge" and then the case "closed". neither of these had happened in those Bankruptcy filings.

6. Did the District Court err in Judicial Notice of the 12/03/2010 Assignment of Deed of Trust. The Assignment to Bank of America is a Void writing and Void ab initio. This has been proven in an ever growing number of cases, including In RE Wilhelm (Idaho) and Bank of New York V. Silverberg (N.Y.). It is clear that Defendant Bank of America fraudulently recorded the assignment into Plaintiff's Land Record to try to fabricate a retroactive case for Bank of America, being the " Lender" on Plaintiff's Home Loan This after Bank of America stated 7 months earlier that they already were the "Lender", in the Related, Loan Modification Agreement in May of 2010. If Bank of America was Lender in May 2010, then they certainly would not need an Assignment of

the Note to themselves (using the name of the MERS registry to do so), in December of 2010.

ATTORNEYS FEES ON APPEAL

Plaintiffs request the court grant to Plaintiffs, the amount of Attorney's Fees appropriate and available to Plaintiffs in this matter, under Idaho Appellate Rule 35 and 11.2.

ARGUMENT

This Appeal of Case No. CV-2014-6128 is regarding two main issues, and related matters. The first main issue is the matter of the June 6, 2010, $907.16 payment by Appellant / Plaintiffs, to Bank of America (BOA) or BAC Home Loans Servicing, LP as identified in the Mortgage Modification Agreement Contract between Appellants / Plaintiffs and Respondent / Defendants, which was the Permanent Section of the Modification, and which Modification Contract had started with the six (6) HAMP Trial Period Payments, as the provided evidence shows. at (R, Vol. 1, p. 222) , (R, Vol. 1, p. 43-46) and (R, Vol. 1, p. 309-311).
This was a result of the HAMP Modification Application that Plaintiffs applied and qualified for. This came about after Plaintiffs Mortgage statements from Defendants BANA, had mentioned that Appellant /Plaintiffs might qualify for the HAMP Modification Program.

The Court rulings and citations in the Idaho case of FNMA V. Hafer, are at all times relative to Plaintiffs case. Also very important and at all times relative is the fact, that since it was a contract of adhesion, Plaintiffs at all times had to rely on Defendant Bank of America's statements as to whom, the Debt was owed at the time. After agreeing to the Modification contract, Plaintiffs have received greatly contradicting statements, notices and filings from Defendants, on the issue of "to whom the debt is owed". Defendant Bank of America wrote into the wording of the 2010 Modification contract of Adhesion, regarding the original loan in May of 2005, that Bank of America is the "Lender" who had advanced the funds to Plaintiffs.

Plaintiffs had to rely on Bank of America's statements as to whom the Entity was that the debt was owed to, when Plaintiffs agreed to the May of 2010 contract to modify the terms of the original contract, with related Deed of Trust recorded on May 25, 2005. Plaintiffs signed the Modification Contract and delivered the Signed Contract and the Money Order for the first Payment, to start the Permanent section of the Modification Contract. As stated in the Payment Record from Bank of America, the August 1, 2010 Due Payment of $907.16 was received by Bank of America on 06-10-2010. Found at (R, Vol. 1, p. 309-311). And this fact is also proven by the statement from the Company who sold Plaintiffs the Money Order, which receipt of is found at (R, Vol. 1, p. 305).

The second issue of great importance is the fact that Defendants have engaged in a contradictory and fraudulent list of Statements, Notices and Court Entries, regarding the identity of the true Entity, to whom the Plaintiffs owe the debt to. Greatly subjecting Plaintiffs to the risk of, claims that Plaintiffs owe two or more different Entities for the same debt and that Appellants were deceived out of a Modification with the proper party to whom they actually did owe the debt to, or through a legally acting Agent who identifies the Principal, as required in Idaho Statute 15-12-301 (agent's duties (#4)) . The UCC states that only "One who gave value" is the Note holder/holder, under UCC 3 - 302(a)(i). Defendants in Case No. CV-2014-6128 often and deceptively refer to themselves as the Note Holder, when Plaintiffs Loan Terms state that the Note Holder is the "Lender" and the UCC rules state the Holder is One Who Gave Value. Defendant Bank of America's Attorney, Derrick J. O'Neill in the 2012, Non Closed, Non Discharged Bankruptcy filing No. 12-20017-TLM, submitted a statement to the Court in Plaintiff's Chapter 13 Bankruptcy filing, that BOA forced Plaintiffs into. (case No. 12 - 20017 -

TLM) This was in BANA's, attorney's "Response to Objection to Proof of Claim", dated August 2, 2012. Derrick J. O'Neill was an attorney from the firm of Routh Crabtree Olsen, PS, a firm who is also the Parent Company of Northwest Trustee Services, who was Allegedly assigned to be DOT Trustee, after the foreclosure action by Bank of America at the time, was dropped. Although the statement by Derrick J. O'Neill was part of the Case No. 12 - 20017-TLM Bankruptcy filing record, attorney Jeff Bower (attorney for Respondent BOA in the currently appealed case (Id. Case No. CV-2014-6128), did not include it in the approximately 70 pages from the Bankruptcy filing, that Bower included in his affidavit for this case, and submitted on June 1, 2015, found at (R, Vol. 1, p. 58 thru 233). Plaintiffs have included a copy of the "Response to Objection to Proof of Claim" from case no. 12-20017 since it is at all times relative and part of the Record given Judicial Notice. The most important section being where Attorney O'Neill states that Bank of America is the Creditor to whom the debt is owed, by way of the alleged Blank Endorsement on the Note. This sworn Statement by Bank of America's Attorney, on August 2, 2012, directly Contradicts the 2-8-2011 dated TILA Notice, stating FNMA ACT/ACT is creditor at the time, and that Bank of America is only Servicer, this found at (R, Vol. 1, p. 210 - 211, item 2(b) on page 211). That TILA Notice is from the year before the sworn statement by the Bank of America Attorney, who does not state that FNMA or FNMA ACT/ACT were ever in the chain of Note ownership. And then during the year after the sworn statement, in a Notice of Servicer transfer dated June 11, 2013, Green Tree Servicing, LLC states that the Creditor is Federal National Mortgage Association (Fannie Mae), this Notice found at (R, Vol. 1, p. 212). So either the TILA Notice and the Notice of Servicer Transfer are fraudulent or the statement sworn into the record by Bank of America's Attorney,

that Bank of America is the Creditor, is fraudulent, as well as the Modification Contract, when Bank of America put in the wording that Bank of America is the "Lender" who had advanced the funds to Borrower.

So in 2010, when Plaintiffs made the $907.16 payment on 06-10-2010, which is proven by the payment record from BOA, found at (R, Vol. 1, p.. 309-311, payment no. 7), which also proves that Plaintiffs were in fact performing on the Modification Contract and as was instructed in the paperwork and notice accompanying the Modification Contract, which is dated May 28, 2010 and can be found at (R, Vol. 1, p. 222). And as can be seen in the "Loan Modification Agreement" at (R, Vol. 1, p. 44) The wording in the first paragraph (second line) states, "and BAC Home Loans Servicing, LP (the "Lender"), then in the following paragraph that is numbered 1. , it states " (the "Unpaid Principal Balance") is $175,947.04, consisting of the amount(s) loaned to the Borrower by the Lender which may include,". So BOA states that BAC Home Loan Servicing, LP is the Lender who had advanced Borrowers the funds. A fraudulent statement, as it is deceit, something Plaintiffs had relied on and an item that had kept Plaintiffs from a modification with the correct entity. Which also kept Plaintiffs from getting back to making their payments to the correct entity and building their credit back to where they could use their credit for things such as growing their business capacity and making more money. So costing Plaintiffs money. Plaintiffs were also forced to sell the most profitable portion of their business to pay for attorneys, another situation which Defendants have forced them into. Not to mention the numerous lost days of work to deal with this issue and the countless sleepless, stress filled nights and days that Plaintiffs have endured as a result of these actions by Defendants. Very relative to these facts, is the sworn statement by BOA attorney Derrick J. O'Neil , when he

states "Note is endorsed in blank" , if this is true, and Defendants have never produced undisputable proof of any of the things they have stated or written. Only the blue ink signed original Note and the signed, dated contracts from the alleged transactions, could prove which of these statements, notices and writings by Defendants are true. But if the statement by attorney O'Neil, dated Aug. 2, 2012 is true, then the Note is a Negotiable Instrument as ruled in UCC Article 3. And "Lender" as explained in the original Note is the "Note Holder", found at (R, Vol. 1, p. 24, section 1). Note Holder definition in the UCC article 3 laws, is "one who gave value". (UCC 3-302(a)(i)). And again, Defendants had given at least two versions of who this might be, during the time of these actions by Defendants. But prior to 2010, Plaintiffs had at all times relied on statements from BOA, as to who the entity was that Plaintiffs owed the money to. And BOA had always told Plaintiffs that after BOA took over Countrywide Financial and Plaintiffs loan, that BOA was the entity to whom Plaintiffs owed the debt to. At all times relevant, after Idaho Statute 15-12-301 became effective in 2008, when it was realized that BANA and other lenders were in fact making fraudulent statements as to who the debt was actually owed to, on many loans, Defendants were required by law, to identify any Principal they represent, in any writings related to Plaintiffs Mortgage Loan.

Plaintiffs were in fact still performing on the Modification contract in September of 2010, as Plaintiffs had first made the 6 Trial Period Payments, and there was an Opinion by the U.S. Court of Appeals for the Ninth Circuit that said the Contract starts with the Trial Period Payments, in Corvello V. Wells Fargo, 2013. But Plaintiffs were questioning why Defendant BANA was not crediting Plaintiff's Permanent Section payments, when BOA sent Plaintiffs a Notice dated 09/16/2010 stating that Plaintiffs had not made the 08/01/2010 and 09/01/2010

payments. The notice also stated that it was a Notice of Intent to Accelerate and Foreclose, and also, of huge issue was the statement on the notice that BANA was just a Servicer for the Note Holder. This meant that BOA was not actually the Lender / Note Holder / Creditor to whom the money was owed, as BOA had stated in the past and had stated in the Modification paperwork . This is when Plaintiffs realized there was a very large problem, as it had also been more than 3 months, at that point, since Plaintiffs had paid the 08/01/2010 due payment, to BANA. As the 08/01/2010 due payment, was paid to BANA on 06/10/2010 and was included with the Perm. Mod. paperwork as BOA had required.

This was a clear violation of a number of laws by Bank of America, as proven in the case of Linza v. PHH Mortgage (Ca. 2014) and others, in light of the fact that Defendant Bank of America was required to credit Plaintiffs payments, the day they are received, as required by 12 CFR 226.36(c)(1)(i) . Plaintiffs called and had more long phone conversations with BOA phone representatives. It was then stated to Plaintiffs that they must re- apply for modification. There is the well documented proof, both in the BOA Payment Record, the page of the record also can be found at (R, Vol. 1, p. 232), but also the Payment Receipt for the $907.16 payment, due 08/01/2010 which can be found at (R, Vol.1, p. 305) and the emailed statement from the money order issuing company, at (R, Vol.1, p. 306) stating that the money order had been cashed on 06/14/2010, just four days after other proof showed that Bank of America had received Plaintiffs $907.16 payment on 06/10/2010. Proof that Bank of America was in error and by then, already in violation of a number of laws.

So in December of 2010, instead of admitting their errors, properly crediting Plaintiffs payments and organizing an opportunity for Plaintiffs to Modify their Mortgage Debt on their

home, with the proper, correct and True Entity to whom the money was actually owed, the last entity "who gave value" for Plaintiffs loan and who purchased the loan, Defendant Bank of America instead manufactured a fraudulent assignment of the related Note and Deed of Trust, to attempt to illegally foreclose on plaintiffs and in the process, declare themselves the owner of the home.

Bank of America arranged and had recorded, an assignment of Deed of Trust, (along with the Note and all monies owed) recorded into Plaintiff's Land Record on 12/03/2010, found at (R, Vol. 1, p. 65). This is an illegal writing, and a Fraudulent document recorded into the Kootenai County Land Records, at the County Recorder's Office .

In the case of Thompson v. Ebbert (Idaho 2007) it was ruled that " because the Lease Agreement is Void ab initio, it could be challenged at any time. Meaning, even if not previously Plead or Statute of Limitations time frame has passed". And this case was cited by Faison V. Lewis (N.Y Court of Appeals 2015) " the fraudulent making of a writing to the prejudice of another's rights" is a void writing. Void is always void !

In the case of In RE Wilhelm (Idaho 2009) , the Judge goes to UCC law for ruling that an attempted assignment of a Mortgage Note, from MERS , makes an assignment Void.
In the case of Bank of New York V. Silverberg (N.Y. S.C. of Appeals) ruling that assignment involving attempt to assign Mortgage Note, from MERS, is Void. Plus many other rulings that MERS has no authority to assign Mortgage Notes. Also, in the Idaho Supreme Court case of Edwards V. MERS the Court ruled that MERS is only an Agent, and an Agent must always Identify its Principal in any writings. as stated in Idaho Statute 15-12-301(Duties of Agent #4) .

The "assignment of deed of trust" that Bank of America had recorded into Plaintiff's Land Record, is Void. As a large and growing numbers of Court cases across the Country have ruled, including the Idaho and N.Y. cases listed above. The 12/03/2010 Assignment only has MERS as the entity assigning BOA the Note, and as is widely known, it is actually only BOA's own employees doing this, as quasi, designated signers (as VP's supposedly). Also a very large and undisputable issue, is the fact that Defendant Bank of America stated in the May of 2010, alleged Mortgage Modification Contract with Plaintiffs, that Bank of America was the "Lender" who had advanced Plaintiff the Funds. Yet approx. six months later, in December of 2010, Bank of America decided it needed to have this assignment of the Note (and all monies due) " for value received " , from MERS to Bank of America. This makes absolutely no sense. And is proof of deceitful actions on the part of BOA. Also very relative, is the fact that in Attorney Derrick J. ONeil's sworn statement that BOA was the Creditor in Aug. of 2012, by way of the endorsed in blank Note, this would contradict any assignable ownership of the Note, by MERS, in 2010. And a Note endorsed in blank, as BOA attorney O'Neil swore Plaintiffs Note was in 2012 , can be convey by purchase for value alone, yet MERS executives have put into the record that MERS never purchases loans.

So in reality, the chain of ownership for Plaintiffs related Note, as stated by BOA at various times, has included, 1. BOA in May of 2010 as stated on Mod. Contract, 2. MERS assigning to BOA in Dec. of 2010, 3. FNMA ACT /ACT in Feb. of 2011 TILA Notice, 4. BOA by way of Blank endorsement by Countrywide, as stated in Aug. of 2012 sworn statement (and apparently not by assignment from MERS in 2010 as prev. stated !) , 5. then Green Tree servicing by way of 3013 assignment of DOT from BOA , 6. but then still FNMA in 2013 as

stated in Green Tree Notice to Plaintiffs, yet FNMA does not show up in the chain of title recorded into Plaintiff's Land Record. A very much impossible Chain of Title ! Arg.

Defendants are in violation of a number of laws, including but not limited to, Breach of Contract, Violation of the Covenant of Good Faith and Fair Dealing, violation of RESPA and TILA Regulations, and further, as a result of these violations by Defendants, Plaintiffs ask the Court to Enjoin Defendants and any later Assignees or successors of Defendants, from Foreclosing on any Debts these Defendants claim or have claimed, against Plaintiffs, until such time that the court decides, and the right title can be established. Plaintiffs also request a Trial by Jury on these issues.

It was claimed by Defendants and their attorneys that Plaintiffs failed to claim these issues in their not discharged, not closed Bankruptcy filings for protection, and as a result, the issue of res judica, as also found by the Judge in the Sept. 2, 2015 hearing. This is false and in error. For one thing, Plaintiffs in fact did raise the issue when they contested Bank of America's Proof of Claim filings, but also, they are wrong on the law. Res judica only happens from a Bankruptcy if the case has been closed, and 11USC350(a) states that it is only (closed) if the case has been fully administered and discharged. BANA attorney Bower cites bankruptcy rule 11 USC 554(c) as the law for this, at (R, Vol. 1, p. 250, L. 10) , and in the wording for 11 USC 554(c) , it is "at the time of the closing" . But there never was a closing for the filings attorney Bower mentions, because each time Plaintiffs started questioning the chain of title for Plaintiffs home that the Defendants had affected, Bank of America would convince Plaintiffs that they would now seriously work out the issues for plaintiffs modification of the loan, convincing Plaintiffs to drop the filings. A

CONCLUSION AND RELIEF SOUGHT

Defendants are in violation of a number of laws, including but not limited to, Breach of Contract, Violation of the Covenant of Good Faith and Fair Dealing, violation of RESPA and TILA Regulations, as well as State laws and Statutes, and further, as a result of these violations by Defendants, Plaintiffs ask the Court to Enjoin Defendants and any later Assignees or successors of Defendants, from Foreclosing on any Debts these Defendants claim or have claimed, against Plaintiffs, until such time that the court decides, and the right title can be established. or to instruct the District Court to do so. Plaintiffs also request a Trial by Jury on these issues.

There has never been a ruling,by a Judge or a Court, on the issue of "to whom the debt is owed" ,at any point in time, for the Mortgage Loan on Plaintiffs home, related to the debt recorded at the Kootenai County Recorder's office in Coeur d'Alene Idaho, on May 31, 2005. Defendant Bank of America / BANA / BOA , has chose to continue to blur the fact of "to whom the debt is owed " at any one time, in the history of this related debt. BANA recording into Plaintiff's land record that themselves and other entities are the entity to whom the Note and all monies owed, were sold, assigned or granted, While at the same time, BANA and Defendant Green Tree Servicing sending Plaintiffs TILA Notices that state that FNMA ACT / ACT, or Fannie Mae, is the entity "to whom the debt is owed". Plaintiffs request the Court or a Jury Trial to prove if one of the here named Entities is the Entity "to whom the debt is owed" or if it is

owed to other Entities who have possibly purchased the debt in the Mortgage Securities markets, as has been stated in the media, that these entities do. The problem is the directly contradicting statements by the Defendants in this case. It is also in violation of Plaintiffs rights of being able to name the proper party "to whom the debt is owed" in a Bankruptcy or other legal filing.

The actions by Defendants, discussed in this Appeal, have affected and damaged Plaintiffs. All Plaintiffs have ever asked of Defendants for is to have Defendants honor the right of Plaintiffs to enjoy the Loan Modification they had qualified for in 2009 and 2010, with the true Entity the debt is owed to.. And in doing so, properly credit Plaintiffs seventh (7) payment on the Loan Modification. Now that Defendants have forced Plaintiffs to pay to file Civil Actions against Defendants, Plaintiff's ask for all relief and damage awards due them under the law. Plaintiffs also ask for the following relief :

1. That the court Enjoin all entities who may have been sold, assigned, granted or otherwise, the debt and all monies owed, in regards to the Mortgage Loan or (Loans), alleged to be related to Plaintiff's home at 890 S. Star Garnet Rd., Coeur d'Alene, Idaho 83814, from Foreclosing or pursuing Foreclosure on Plaintiffs home, until the time that the issue of "to whom the debt is owed" and the legal chain of Entities to that current Entity, can be decided by the Court or a Jury Trial.
2. That the Court rule, the District Court erred in dismissing case number CV-2014-6128, and in granting Judicial Notice to the Assignment of Deed of Trust recorded into Plaintiff's Land Record on 12/03/2010, and all related recordings down line from the assignment,as they are also Void. And the Court rule that the 12/03/2010 recording of the Assignment of Deed of Trust is in fact Void or Void ab initio.

3. That the Court rule, on all issues asked for in the Amended Complaint of case number CV-2014-6128, Or in the alternative,to order a Jury Trial on the issues discussed in this Appeal. Or in the alternative, instruct the District Court, to now rule on these issues.

That the Court rule for Punitive Damages to Plaintiffs, by Defendants, regarding the violated laws and rights of Plaintiffs, including but not limited to, violations of TILA, RESPA, and all other National Mortgage Servicing related laws and statutes, as well as all related State Statutes and laws. Or in the alternative, order a Jury Trial on the Punitive Damages. Or in the alternative, instruct the District Court to rule on the Punitive Damages.